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THE MONARCHOMACHS.

THEORIES OF POPULAR SOVEREIGNTY IN THE SIXTEENTH CENTURY.

WHEN in 1564 Calvin, the last of the quartette of great Reformers which included Luther, Zwingli and Melancthon, passed away, the conditions and influences were clearly discernible which were to give character to the dramatic history of Western Europe during the next half-century — the period of widespread civil and international warfare in which difference in religious creed marked the line of division between the combatants. Philip II, well settled as successor of Charles V in Spain and the Netherlands, was manifesting his purpose to rule as absolute sovereign throughout all his possessions and to crush Protestantism wherever it existed. In England, France and Scotland three women, despite John Knox's frantic demonstration of the iniquity of such a thing,¹ held the reins of political power — Elizabeth, persecuting Calvinists as well as Catholics, yet already the mainstay of Protestantism against Philip; Catherine de' Medici, Catholic if anything by conviction, but wholly Machiavellian in her employment of religion to aid her in wielding the authority which rested nominally in her weak and incapable son, Charles IX; and finally, Mary, Queen of Scots, a passionate French girl, struggling by girlish methods — with "owlings and tears," as John Knox described it — to assert for herself some small measure of the rights of a sovereign against the violent nobles and the grim Presbyterians who denied to her either political or religious independence.

In Spain and in England there was no civil war during the period we are considering. Philip and Elizabeth alike knew how to assert and enhance a monarchic authority that should be secure against resistance. Absolutism in each case rested upon national feeling: the Spaniards submitted to Philip through pride in the greatness of his power, and the English supported Eliza-

¹ See his First Blast of the Trumpet against the Monstrous Regiment of Women.

beth through fear of this same power. Autocracy was an undisputed fact in both countries, and by virtue of this condition, amid all the literary activity that characterized the period, political theory, as is usual in a time of absolutism, received practically no attention in England and Spain.¹ Quite different was the case in France, Scotland and the Netherlands. In each of these lands civil war was chronic during the last half of the sixteenth century, and from each arose striking contributions to political philosophy.

Though these wars were rather more political than religious in origin, they became in their development distinctly affairs of creed, and in each case the result turned upon the demarcation between Protestant and Catholic. Thus before the end of the sixteenth century the teachings of Luther and Calvin, despite the pacific leanings of the Reformers themselves, had by force of circumstances become a decisive factor in the political transformations of the chief powers of Europe. Protestantism in consequence assumed a militant aspect, and out of the turmoil developed theories of Christian duty in the state that bore little resemblance to the ancient ideals of passive obedience to established authority. To explain the proceedings and the triumphs of the French, the Scottish and the Dutch Calvinists, a thorough and aggressive overhauling of political dogma was required, and to some of the chief works by which this was effected our attention will now be directed.

The Vindiciæ contra Tyrannos.

The controversial literature which was produced in France by the religious wars included many violent anti-monarchic works by Catholic as well as by Protestant writers. The latter found their chief inspiration in the affair of St. Bartholomew's, the former in the abandonment of the League and the assassination of the Guises by Henry III. So far, however, as philosophical foundation and general principles were concerned, the Catholic and the Protestant debaters were substantially on common ground. Both alike justified resistance to a French king on the general principle that under certain circumstances a king became a tyrant

¹ Mariana, whose work is considered below, wrote just at the end of the reign of Philip II; and moreover, Mariana's work was conspicuously exceptional. For jurisprudence, however, this period was most glorious in Spain.

and hence an outlaw, and on the particular principle that under the French constitution the monarch was subject to pretty well-defined limitations. Among the earliest and most influential demonstrations of both these principles were the two Huguenot works: *Franco-Gallia*, by the distinguished jurist Francis Hotoman, and *Vindiciæ contra Tyrannos*, published under the pseudonym of Stephanus Junius Brutus, and written probably by either Hubert Languet or Duplessis-Mornay. To these works, and especially the latter, our attention may be confined.¹

The *Franco-Gallia*, published in 1574,² limited itself practically to the demonstration that France was never, in its constitutional origins, an absolute monarchy, but that, on the contrary, a general assembly of the nation had exercised the highest political powers throughout the early history of the Franks and during the Merovingian, the Carolingian and later periods. Hotoman's historical erudition was very great, and he massed with powerful effect the quotations that he gathered from the ancient chronicles to show that kings were chosen and deposed, legislation was enacted, and all the most important political business was transacted in the annual public council of the Franco-Gallican state. But the work did not go into the field of general political theory and affected the development of that system of thought only by suggesting and illustrating the applicability of the historical method to the questions at issue.

Of an entirely different character was the *Vindiciæ contra Tyrannos*, or *The Grounds of Rights against Tyrants*.³ This embodied a most comprehensive treatment of the foundation of monarchic authority, and presented from the Protestant point of view a doctrine which radically transformed the attitude that had been taken under the instruction of the leading Reformers. The work is systematic as well as comprehensive, and the style exhibits that

¹ Prominent among the Catholic anti-monarchic works in France were: Boucher, *De iusta Henrici III abdicatione*; Rossæus, *De iusta reipublicæ Christianæ in reges impios et hæreticos auctoritate*. See Janet, *Histoire de la science politique*, vol. ii, pp. 82 *et seq.*; Treumann, *Die Monarchomachen*; Hallam, *Literature of Europe*, vol. ii, ch. iv.

² I have used an English translation published in London, 1738.

³ Published in Latin in numerous editions. I have used that of 1595, annexed to a Latin version of Machiavelli's *Prince*.

same glowing quality which marked the expression in St. Bernard, some centuries earlier, of the best traits of the Gallic temperament through the medium of the Latin language exquisitely handled.

The *Vindiciæ* answers four questions, of which the first is: Whether subjects are bound to obey a prince who enjoins what is contrary to the law of God? To this a negative answer is obvious, based on the positive injunction of the Scriptures, on the incidents of the procedure through which Saul was set up as king over Israel, and, incidentally, on the analogy of the feudal relationship, under which a vassal is bound to obey the superior rather than the inferior lord in case their commands are in conflict.¹ This answer is no different from that which had been given by Luther and Calvin.

The second question is not of the right to disobey, but of the right to resist: Whether it is lawful, and if so, to whom, in what manner, and to what extent, to resist a prince who is violating the law of God and laying waste the church?² The answer to this question presents formally and completely the theory of contract as determining the reciprocal rights and duties of God, king and people, and presents the theory in such form as to exhibit perfectly the two sources of this celebrated doctrine of politics — Old Testament history and the Roman law.

It is assumed at the outset, in the long familiar manner, that the relation of God to the people of Israel must be accepted as the type of his relation to every Christian people. But the controlling principle in the Old Dispensation was covenant or contract (*foedus*). God chose Israel as his peculiar people and they on their part agreed to maintain his exclusive worship.³ When royalty was set up this covenant was confirmed and renewed. On

¹ "Reges omnes Dei vassallos esse, omnino statuendum est . . . Si Deus est domini superioris loco, rex vassalli, quis non domino potius quam vassallo obediendum pronunciet? Si Deus hoc præcipit, rex contra, quis regi adversus Deum obsequium denegantem rebellem iudicet? . . . ergo non modo non tenemur obedire regi, contra legem Dei quid imperanti, verum etiam si obediamus, rebelles sumus."

² "An liceat resistere principi legem Dei violanti et ecclesiam Dei vastandi: quibus, quomodo et quatenus?"

³ This contract was made by Israel at Ebal and Gerizim. Deut. xi, 29 and xxvii *et seq.*; Joshua, xxiv.

this occasion the installation of monarchy involved two distinct contracts.¹ The first was that in which God, on the one hand, and the people and king on the other, engaged to maintain the ancient relation of the chosen people, as the church of God; the second was that to which the king and the people were the parties, the former agreeing to rule justly and the latter to obey him. It is under the first of these two contracts that the right of resistance to an impious prince is manifest. King and people are co-contractors to maintain the worship of God; each, therefore, is responsible for the fulfillment of the obligation, and each is authorized to restrain the other from violating it, since the innocent party would participate in the penalty for such violation. The author of the *Vindiciæ* elucidates the situation by copious references to the Roman law, and feels no incongruity in construing the relation of man to his Creator in terms of the rules of the marketplace.² In the Old Testament history abundant instances are found in which the kings enforced upon the people conformity to their pledge to maintain the worship of God, and quite as many, on the other hand, in which the people constrained the kings to keep the covenant, or deposed them for the failure to do so.

But the right of the people thus demonstrated, to resist a king who is deviating from his duty to God, is not to be recognized as pertaining to the masses in general. Action can be taken only by the magistrates or the assemblies in whom the power of the

¹ II Kings, xi; II Chron. xxiii.

² The contract, he explains, is like that in which a creditor is secured by the joint and several obligations of two or more debtors. "Videtur Deus fecisse quod in dubiis nominibus creditores facere solent, ut plures in eandem summam obligentur." The fact that the people is a party to the covenant is evidence that the people is not regarded by God as in that servile condition to which the courtiers assign it; for according to the Digest a slave is incapable of contracting. But perhaps the most interesting instance of the author's preoccupation with the Roman law is to be found in his comments on the death of Saul. The king's destruction is explained, of course, as the penalty of his failure to keep the covenant with God. But why, the author asks, was his army, *i.e.* the people, also destroyed? It must have been because of their joint responsibility with him. For God would not avenge the sins of a king on his people, or of a father on the son. "Acerbum est, aiunt iurisconsulti, parentis scelera filiorum poenis lui. Alieni sceleris quemquam poenas pati iura non sinunt." That is, the author, in following he *iurisconsulti*, forgets God's own words, "visiting the iniquity of the fathers upon the children unto the third and fourth generation."

people is organized. The multitude as a whole, "that monster with countless heads," is incapable of action; but in every well-organized realm there are princes, peers, patricians, nobles, *etc.*, normally constituting an assembly whose function is to see to the safety of the state and the church. Private citizens have no right of resistance save in support of the magnates, or by virtue of a special mandate from God.¹ The maintenance of religion, thus, is assigned to the estates of the realm, and the reference that the author makes to the deeds and doctrines of Constance and Basel indicates with sufficient clearness both the source and the conservative character of his theory.

The third question propounded in the *Vindiciæ* concerns the right of resistance on other than religious grounds: Whether and to what extent it is lawful to resist a prince who is oppressing and destroying the state?² The answer embodies a complete and systematic demonstration of popular sovereignty by divine right. Royalty, the argument runs, is merely an institution of convenience for the benefit of the people. God sanctions it to this end. A king never reigns in his own right; he is chosen by God and is installed by the consent of the people.³ The history of the Israelites, of the ancient Greeks and Romans and of the French monarchy is shown to establish this principle. "No one is born a king; no king can exist *per se* or can reign without a people. But on the contrary, a people can exist *per se* and is prior to the king in time." Even where, as in France, the kingship is hereditary, the fundamental fact is that the choice of a king is voluntarily limited by the people to a single family.⁴ That the essential function of royalty is to provide for the welfare of the people, is obvious from the nature of things. It is clear at the outset that men who are by nature free, impatient of subjection and born rather to com-

¹ But the claim to a special mandate must be most carefully established in order to justify action by a private citizen: "privatos ni extra ordinem ad id munus vocatos evidenter appareat, suapte auctoritate arma se capere nullo jure posse."

² "An et quatenus principi rempublicam aut opprimenti aut perdenti resistere liceat? Item quibus id et quomodo et quo iure permissum sit?"

³ The whole argument consists in a formal proof that "electionem regis tribui Deo, constitutionem populo."

⁴ "Qui vero ex ea stirpe proximi sunt non tam reges nascuntur quam fiunt; non tam reges quam regum candidati habentur."

mand than to obey, have not deliberately chosen submission to another and renounced the law of their very nature, as it were, except for the sake of some great advantage.¹ Taking from Seneca the conception of a primeval "golden age," in which government was unnecessary and no one would have had a crown if he could have picked it up in the street, the author ascribes the origin of royalty to the necessity for leadership that arose when private property began to be recognized.² Monarchs were appointed to determine rights at home and to lead armies abroad; but they always remained subject, in their powers and actions, to the end for which they were created. Such being the original character of royalty, it is easy for the author to prove, as he does at length in most eloquent fashion, that the sweeping claims of power made by courtiers (*aulici nostri*) on behalf of kings, especially in reference to property and taxation, are baseless.³

The true principle on which to explain the whole relation of king to people is that of the second contract already referred to. This is entered upon between the king, on the one side, and the magnates, representing the whole people, on the other. The form is that of the Roman *stipulatio*, and the people has the part of *stipulator*, which, the author observes, is at law the more advantageous. The people asks of the king whether he will reign justly and according to law; he answers that he will. Thereupon the people pledges itself to yield faithful obedience so long as he keeps his promise. Thus the king contracts absolutely, the people conditionally; hence, the failure of the king to fulfill his undertaking frees the people *ipso iure* from their obligation. This compact completes the relationship which is inchoate in the first compact of king and people with God.

¹ "Primum sane palam est, homines natura liberos, servitutis impatientes, et ad imperandum magis quam ad parendum natos, non nisi magnæ cuiusdam utilitatis causa imperium alienum ultro elegisse, et suæ quasi naturæ legi, ut alienam ferrent, renunciassent."

² "Cum igitur *Meum* illud et *Tuum* orbem invasissent ac de rerum dominio inter cives, mox vero de finibus inter finitimos, bella exorirentur . . . reges creati sunt ut domi ius dicerent, foris vero exercitum ducerent."

³ "Statuamus tandem oportet reges patrimonii regii non proprietarios, non fructuarios, sed administratores tantum esse. Cumque ita sit, multo sane minus aut rerum privatarum cuiusque aut rerum publicarum quæ ad singula municipia pertinent proprietatem usumfructumve sibi tribuere posse."

In the first covenant or pact piety comes under the bond; in the second, justice. In the one the king promises dutifully to obey God; in the second, justly to rule the people; in the one, to provide for the glory of God, in the other, to maintain the welfare of the people. In the first the condition is, if you observe my law; in the second, if you secure to each his own. Failure to fulfill the first pact is punishable immediately by God; failure to fulfill the second, legitimately by the whole people, or by the magnates of the realm (*regni proceres*), who have undertaken to watch over the whole people.

That such is the true foundation of all royal governments is evident, the author holds, from the coronation pledges and oaths that have appeared throughout history;¹ but even without these, it would be manifest from nature itself. Hence the definition of tyranny is easy: the tyrant is he who willfully disregards or violates the contract through which alone monarchic dominion is legitimate. The usurper, or tyrant *absque titulo*, is an outlaw, and resistance to him is the right of every one, even the private citizen, under natural law, under the law of nations and under civil law. As to the tyrant *exercitio*, that is, the lawful king who becomes unjust and oppressive, the representatives of the people, having assured themselves that his offenses are not due to ignorance, unintentional error or mere incompetence, but are willful and deliberate, must constrain and, if necessary, depose him. Such is their duty; they stand toward the king in the position of co-guardian (*contutor*), to see that he does not violate his obligation to his ward (*pupillus*) the people.² The council of the realm is in the state what the general council is in the church; and as it has been universally admitted that the general council may depose a pope, even though he claims to be king of kings, with how much better warrant may the council of the realm depose a monarch. But private citizens cannot act in this matter. Resistance to the tyrant *exercitio* is the right only of the whole people,

¹ He dwells with special unction on the famous formula employed by the Justitia of Aragon in the installation of the king: "We, who are as good as you and are more powerful than you, choose you as king," etc.

² Here the author's anxiety to fortify his doctrine with legal principles leads to a change of base; there is a considerable difference between a *stipulator* and a *contutor*.

with whom, as contrasted with individuals, the governmental compact is made; and the *populus universus* is represented in the one function as in the other by the great council of the magnates.

The fourth question debated in the *Vindiciæ* is: Whether it is the right and duty of princes to interfere in behalf of neighboring peoples who are oppressed on account of adherence to the true religion, or by any obvious tyranny? ¹ The answer is affirmative on both branches of the question, and the ground is, in the one case the unity of the Christian church, in the other the unity of humanity, involving respectively duty to God and duty to one's neighbor. As the preceding questions are designed to justify the resistance of the Huguenots to Charles IX and Henry III, so this is designed to justify the action of Elizabeth of England and some of the Protestant princes of Germany in extending aid to the struggling Huguenots. And as the doctrine of popular sovereignty is the outcome of the one undertaking, so an enlightened view of international solidarity is strongly presented in the other.

George Buchanan.

The chief contribution to political theory which was due primarily to the Scottish Reformation was Buchanan's work *On the Law of the Realm among the Scots*,² published in 1579. John Knox's literary productions were multifarious and influential but they embodied no systematic treatment of politics. Buchanan, however, in the monograph named, undertook a scientific apology for the anti-monarchic proceedings of recent times, especially in Scotland, and dedicated the work, with grim Presbyterian satisfaction, to his royal ward, the young James VI. The central point of the whole subject, Buchanan assumed, was the distinction between king and tyrant, and the elaboration of this distinction is the general theme of the work.³ In literary form as well as in content the monograph reflects very faithfully the humanistic erudition of which the author was so famous a master.

¹ "An iure possint aut debeant vicini principes auxilium ferre aliorum principum subditis, religionis purae causa afflictis aut manifesta tyrannide oppressis?"

² De iure regni apud Scotos. Appended to his *Rerum Scoticarum historia*, Aberdeen, 1762.

³ Cf. secs. 6 and 7.

Society and government originate, Buchanan holds, in the effort of men to escape from the primordial state of nature, when, as Polybius had described it, they lived the bestial life, without law and without fixed abodes.¹ The impulse to social life came partly from the sense of self-interest,² but rather more fundamentally from the instinct of association implanted by nature, or, better, by God. In society thus constituted the attribute essential to continuous existence is justice, as in the physical man it is health. The function of the king, therefore, is to maintain justice; and Buchanan throughout his work recurs again and again to the Platonic analogy of the true ruler and the skilled physician. But experience teaches men that justice is to be maintained rather by laws than by kings; hence it is that the rulers, originally unlimited in power, have with the development of enlightenment been always subject to law.³ The maker of the law is the people, acting through a council of representatives chosen from all classes, and the interpreter of the law should be, not the king, but a body of independent judges. Nor is the king even to fill the gaps which are bound to appear in the law from time to time. His function in relation to the law is reduced to the minimum; and yet, Buchanan holds, his task is a most substantial and difficult one, — namely, to maintain the general *morale* of the state by setting to the citizens a high example of rational and virtuous living.⁴

Having evolved this rather vague and visionary concept of the king, the author bodies forth the figure of the tyrant, whose characteristics are expressed with all the rhetorical frenzy that classical literature has rendered conventional.⁵ Essentially, however, the tyrant is a monarch who either has obtained his power without the consent of the people, or has exercised it otherwise than in

¹ . . . "tempus quoddam cum homines in tuguriis atque etiam antris habitarent ac sine legibus, sine certis sedibus palantes vagarentur." Sec. 8.

² He notes very acutely the danger of considering self-interest as the essential principle of social unity; for it may be adapted as well to the dissolution-as to the consolidation of a community. Cf. sec. 9.

³ "Regum insolentia legum fecit desiderium."

⁴ Sec. 39.

⁵ Cf. the description of the tyrant's life, with "horror," "metus," "faces Furarum," "bellum," and all the rest of the familiar accompaniments.

conformity to justice. In the former case he is a mere outlaw, an enemy of the race and at the mercy of every one; in the latter case he is by the nature of the office, as set forth above, liable to the people for violation of the law, which is the expression of justice as conceived by the given society. Buchanan controverts, with great skill and precision, the arguments drawn from the Scriptures for passive obedience to tyrants. St. Paul's injunction of submission to the higher powers is subjected to an especially careful interpretation, the substance of which is that the apostle was addressing those who were, like the Anabaptists, tending to disregard all social and political institutions, and that the command, therefore, referred to authority in general and not to the persons who at any time exercised the authority.¹ In view of this construction of the injunction to obedience, together with the express command of the Lord that the wicked be cut off and removed out of the midst of the people, Buchanan's conclusion is that a tyrant may be slain with impunity.²

The whole basis of the relation between king and people, particularly in the Scottish realm, is summed up, Buchanan holds, in the terms of a contract. A hereditary right to exercise royal power has been granted by the people, but it is not in human nature that such power be given and obedience pledged without some consideration,³ and the consideration in this case is the promise to conform to justice and law in the exercise of the power. Violation of the terms of the pact by either party dissolves the bond and releases the other party from further obligations. But the king whose conduct has such an effect and who thus promotes the destruction of human society becomes a tyrant and an enemy of the people, and is therefore the object of a just war; and when such a war has once begun, it is lawful not only for the people as a whole but even for individuals to slay the enemy.

¹ Secs. 60-70. Paul, he says, wrote just what would be written now to the Christians living under the rule of the Turks — to submit to overwhelming force in the interest of peace, though without any implication that the Turkish power is in the true sense legitimate. Sec. 70.

² Secs. 53-56, 86.

³ "*Habet humanus animus sublime quiddam et generosum natura insitum ut nemini parere velit nisi utiliter imperanti; neque quicquam est valentius ad continendam humanam societatem quam beneficiorum vicissitudo.*" Sec. 55.

Tyrannicide, thus, is in last resort a just device for maintaining the reign of law among a people. But before this last stage is reached there must be some way in which the people can proceed in seeking to confine the king to legal paths. Who shall call him to judgment? Buchanan's answer¹ to this crucial question lacks altogether the degree of clearness attained in the *Vindiciæ*. It must be, he says, the whole people, who alone are above the law. But what if there be, as is always the case, a difference of opinion among the people? Then the majority must decide. But what if the majority, from timidity or negligence or venality, stand by the king? Then they must be considered bad citizens, and the decision must be made by the good citizens, who will always be on the side of liberty and decency.

This very impotent conclusion exhibits the bankruptcy of his whole theory, as a practical scheme for judging institutions. The final judgment on the ultimate issue in the state is to rest with the "good" citizens; but there is no criterion for determining who are "good" citizens except that they decide this issue in a certain way. Buchanan indeed concedes the bankruptcy of his theory by the remark: "But even if the whole people (*tota plebs*) should dissent from proceeding against the king, this has nothing to do with our discussion; for we are inquiring not what will happen, but what can justly happen."

Johannes Althusius.

The systematic political doctrine which embodies most distinctly the influence of conditions in the Netherlands at the end of the sixteenth century is that of Althusius, the German jurist. This philosopher was for thirty-four years (1604-38) chief magistrate of Emden, an imperial city on the frontier of the new Dutch Republic, and in both practical activity and doctrinal conviction he manifested the fullest sympathy with the religious and political ideals of the people who were just freeing themselves from Spain. His work on political theory, *Systematic Politics*, illus-

¹ Secs. 76-80.

trated by examples from Sacred and Profane History,¹ was published in its complete form in 1610, when the familiarity with the situation in the Netherlands had produced its fullest effect on the writer's mind.²

The salient features of Althusius's system are (1) exhaustive analysis and application of the contract theory in the explanation of social and political organization; (2) a clear and precise conception of sovereignty; (3) the ascription of sovereignty exclusively and immovably to the people; and (4) a conception of "people" which is incompatible with any idea of a "state" except that of a confederacy of lesser organized units.

Every species of associated life (*consociatio*) among human beings has its foundation, Althusius holds, in an agreement or contract to which the individuals are parties, and involves (1) a body of rules in accordance with which this society is to be conducted and (2) a relationship of command and obedience among the members for the administration of these rules. Human society in its most general aspect consists of a vast series of associations, rising with increasing degrees of complexity from the family, through the corporation, the commune, the province, to a climax in the state. These various species of social organization, with all their infinite sub-classes, are most diverse in their purposes, but all alike have the characteristic stated above: in each the given end conditions the administration of its affairs, and the essence of the corporate life inheres in the contract by which the individual members unite for the achievement of that end. Of the public associations, families unite to form communities, *viz.*, villages, counties, towns, cities;³ these unite to form provinces; and the

¹ *Politica methodice digesta, exemplis sacris et profanis illustrata*. For the account of Althusius's life I have followed implicitly the exhaustive monograph of Gierke: *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, Breslau, 1880. And because I have been unable to procure a copy of Althusius's work, I have also followed Gierke's analysis of its contents. There is a useful analysis also in Bluntschli, *Geschichte der neueren Staatswissenschaft*, pp. 77 *et seq.*

² The work was dedicated to the Estates of Friesland, one of the United Provinces, and in the preface the revolt from Spain is glorified as a realization of the theory of the work.

³ *Vici, pagi, oppida* and *civitates* are various forms of the lower political corporations.

latter in turn unite with the cities or one another to form the highest type, the state (*politia, imperium, regnum, populus, res-publica*). The state he defines as a general public association in which a number of cities and provinces, combining their possessions and their activities, contract to establish, maintain and defend the rights of the realm.¹ From this it follows — and Althusius emphasizes the point again and again — that the members of the state are not at all the individuals who reside within its limits, but the lesser corporations (cities and provinces) through whose contractual union it comes into existence.

Sovereignty (*maiestas*) is defined as the supreme and super-eminent power of doing what pertains to the spiritual and bodily welfare of the members of the state. This power inheres, by the very nature of the association, in the people — the totality, that is, of the members of the state. Not each member is sovereign, but the members as an aggregate. Like all the anti-monarchic writers, Althusius illustrates his theory by the dictum of the Digest: "What is owed to a corporation is not owed to its individual members";² and he ascribes sovereignty to the corporation, not to its members. But for the purpose of carrying out the functions of the state duties may be distributed among agents of the sovereign, and it is in this capacity alone that kings and magistrates exercise authority. These functionaries, whatever their power and jurisdiction in reference to the individuals, are by the very nature of the case themselves subject to the people as a whole. This appears not only from the nature of every association, in which the members unite for a certain end and necessarily retain control over the means to that end, but also from the nature of man himself; for all men being naturally free and equal, the exercise of authority by one over the rest must be based on the consent of the latter. Sovereign power, therefore, when properly understood, cannot conceivably be vested in any individual or group of individuals less than the whole people. It cannot be

¹ "Universalis publica consociatio, qua civitates et provinciæ plures ad ius regni mutua communicatione rerum et operarum, mutuis viribus et sumptibus habendum, constituendum, exercendum, et defendendum se obligant." Gierke, *op. cit.*, p. 25.

² "Quod universitati debetur singulis non debetur."

conferred upon any one by the people, for it is inextricably involved in the essential conditions of social life; so long as there is a people, it must possess sovereignty. The duty of every officer of the state, then, is to submit to and enforce the laws in which the will of the sovereign people is embodied.

The officials of a state fall into two classes: first, what Althusius calls the "ephors"; second, the "chief magistrate" (*summus magistratus*). Under the first head he includes all the various orders and estates in provinces and cities whose function it is to act as a restraint on the chief magistrate. These various bodies, or individuals endowed with similar powers, are representatives of the whole people and are the organs for the expression of the sovereign will. In default of action by them on any point their authority devolves for exercise upon the assembly of the whole people. Under "chief magistrate" Althusius sets forth his conception of royal authority. The king is the executive of the people, to secure their interest and safety by carrying out the laws. His relation to the people is that of agent (*mandatarius*), and a contract between him and the people is perfected through his choice and coronation. He undertakes to govern in conformity to the fundamental laws of the land, and they agree to obey him. But like the author of the *Vindiciæ*, Althusius assigns to the people the advantageous rôle of *stipulator*, and maintains that the obligation of the king is absolute while that of the people is only conditional.

From this conception of the relation between king and people the familiar conclusions as to the tyrant follow. Deliberate violation of the law or dereliction in his duty transforms the chief magistrate into the tyrant, releases the people from the pledge of obedience, and calls into action the right of resistance and deposition¹ which is dormant so long as the pact is observed. The exercise of this right in its completeness pertains, however, only to the people in their sovereign totality, acting through the ephors; private individuals may merely interpose a passive resistance to unlawful commands and defend themselves in case their natural rights are assailed. But while to the ephors, as a body repre-

¹ "Ius resistentiæ et exauctorationis."

senting the sovereign people, pertain the right and the duty of resisting, of expelling and of putting to death the tyrannical chief magistrate, to each member of the confederacy, acting through its particular ephors, belong the right and the duty, as an ultimate means of security against tyranny, of renouncing its connection with the rest and of associating itself with some other realm. A breach of the compact out of which the state arises, thus, justifies not only resistance but also secession; and Althusius regards this doctrine as a source of peculiar strength to the state, inasmuch as it provides an effective guarantee for the observance of the law of the land.¹

The most cursory view of the system of Althusius reveals that it is a generalization from the constitution of the decaying German Empire, with adaptations to the recent conditions in the Netherlands. Apart from the framework of his system outlined above, there is much of sound and suggestive political science in his work. As illustrations may be cited his treatment of the functions and the forms of government. The ends of the social organization being twofold, namely, the spiritual and the secular welfare of the members, the functions of the government are to correspond. First, it must supervise religion, worship, morals and education; second, it must prescribe general rules of social conduct, to be enforced by penalties, and in addition must carry on a wide range of concrete activities for the positive promotion of the general welfare, including supervision of trade, commerce, coinage, weights and measures, the administration of the public revenues and property, and the protection of the people from internal perils and external force. Althusius is a thorough Calvinist, and his scheme of governmental functions includes the maintenance of a state church, with a school system under its direction, and a far-reaching censorship of morals.

As to the forms of state, he rejects entirely the ancient classification and holds, logically enough, that since by the very nature of the state sovereignty must be in the people, there can be no more than one form of state. Government, however, may be monarchic or polyarchic, according as the chief magistrate is an

¹ Gierke, *op. cit.*, p. 35.

individual or an assembly. Yet, Althusius points out, it is scarcely conceivable that any purely monarchic or purely polyarchic government could exist; there will always be in a monarchy various councils and assemblies to share the responsibilities of the chief, just as there will always be in a polyarchy a concentration of functions in some individual for actual execution. Hence, he concludes, every government is normally a mixed form, and the names monarchy, aristocracy and democracy have real significance only as designating the most important element in each specific case.

Juan de Mariana.

While the bulk of the anti-monarchic doctrine of the period we are considering had its inspiration in the controversies between Protestant subjects and Catholic rulers, one very notable exposition of this doctrine was produced in a kingdom where the Catholic faith and royal absolutism had practically undisputed sway, and by an author who was identified with the society that most staunchly upheld the cause of the old worship against the Reformers. I refer to the work of the Spanish Jesuit, Juan de Mariana, entitled *On Kingship and the Education of a King*,¹ published in 1599 and dedicated to Philip III, of Spain. The extreme views embodied in this work as to the limitations upon royal power probably represent the influence of the extensive researches to which the author had long devoted himself in connection with his great *History of Spain*;² like Hotoman, in France, he had been impressed with the relatively large part played by the Estates in the growth of monarchy.

In developing his conception of the king, Mariana starts from the natural state of men, which he describes with some fullness on the general lines of Polybius's idea. In the beginning men lived like wild animals, following instinct in the procurement of food and the propagation of their kind, bound by no law and subject to no authority. The life had its advantages: nature furnished food and drink and shelter, through fruits and streams and caves;

¹ *De rege, et regis institutione*. I have used the edition of Mainz, 1605.

² *Historiæ de rebus Hispaniæ*, first published in 1592.

cheating, lying, avarice and ambition were unknown, and the cares of private property had not made their appearance; but, on the other hand, man's wants were greater and more varied than those of other animals and at the same time he was less adapted than they¹ to the protection of himself and his young from the dangers that incessantly arose from both animate and inanimate forces around him. It was to overcome these disadvantages that men grouped themselves together and submitted to the leadership of some one who displayed especial capacity in promoting their welfare. This was the origin of civil society, with all its blessings to the race. The timidity and weakness of men were the divinely implanted qualities through which the rights of humanity were to be developed.²

The earliest and natural form of government, thus, was the rule of one, recognized as the wisest and unrestrained by anything like law. But the restraints of law were soon imposed because, in the first place, the wisdom and impartiality of the monarch began to be questioned, and in the second place, the evil passions of men, growing stronger *pari passu* with the increase in knowledge, required some general system of restraint. Laws were at first probably very few and very simple; but with time they increased in number and complexity till now, Mariana mournfully observes, "we are as much burdened by laws as by vices."³ The existence of law, however, by the side of the personal ruler he regards as of the essence of government, and on this assumption he discusses the various forms of authority that have arisen among men since the first natural monarchy. Royalty is, on the whole, his preference. Democracy is plausible; but, he points out, fol-

¹ Mariana dwells especially on the helplessness of the human infant as compared with the young of other animals. De rege, bk. i, ch. i.

² "Sic ex multarum rerum indigentia, ex metu et conscientia fragilitatis, iura humanitatis (per quam homines sumus) et civilis societas, qua bene beateque vivitur, nata sunt. . . . Omnis hominis ratio ex eo maxime pendet, quod nudus fragilisque nascitur, quod alieno præsidio indiget atque alienis opibus adiuvari opus habet." *Ibid.* bk. i, ch. i.

³ "Illud etiam fit verisimile, leges initio paucissimas exstitisse easque paucis et apertis verbis nulla explicatione eguisse. Legum multitudinem tempus et malitia invexit tantum ut iam non minus legibus quam vitiis laboremus." *Ibid.* bk. i, ch. ii.

lowing Pliny, wherever power is in a group of men, the less wise part will always prevail, "for the votes are not weighed but merely counted."¹ Monarchy restrained by law has less evils and greater efficiency than the other forms. It is likely, however, to degenerate into tyranny, which Mariana, following Aristotle, regards as consisting in monarchic rule exercised for the good of the ruler rather than the good of the subject. Against this species of government Mariana directs his celebrated and very radical theory of the right of tyrannicide, under which are included the less drastic forms of resistance.²

The broad grounds on which he bases the justification of resistance are, first, the sovereignty of the people, and second, the common sense of mankind, as exhibited in history. The royal power (*regia potestas*) has its source in a grant by the people (*res publica, populus*); but in making this grant of certain rights (*iura potestatis*) the people reserves to itself even greater rights, namely, those of taxation and legislation. The people is, in other words, above the monarch. Furthermore, the familiar examples of the deposition and execution of tyrants by peoples in all parts of the world tell plainly of the belief that has universally prevailed, and this universal belief is properly to be taken as the voice of nature in our souls.³ Hence the monarch who is clearly ruining the state is justly liable to removal by the people. Care must be taken in the process so that no greater disturbance than is necessary ensue. The assembly of the people must warn the offender to reform, and only upon his refusal must proceed to extremities. When, however, the people through its assembly has spoken, then, and not till then, may the private individual justly stay the tyrant. If, however, as is likely to be the case, the assembly is not permitted to meet or to act, the private citizen is justified in killing the tyrant at discretion.⁴

¹ . . . "in omni deliberatione pars sanior a peiori superabitur; neque enim suffragia ponderantur sed numerantur." *Ibid.* bk. i, ch. 2. Cf. Pliny, bk. ii, epist. 12.

² This is the content of book i, chapter 6: "An tyrannum opprimere fas est?"

³ "Et est communis sensus quasi quædam naturæ vox mentibus nostris indita, auribus insonans lex, qua a turpi honestum secernimus."

⁴ But giving him poison to drink is an unchristian method of assassination. It makes the victim in a sense a suicide, and suicide is contrary to divine and nat-

Mariana is fully aware of the dangers that are latent in this doctrine. He concedes that it practically leaves to individual judgment the decision as to who shall be considered a tyrant and thus strikes at the root of all political authority. But still he considers the principle on the whole a useful one. Men are in general strongly disposed to submit to tyranny for the sake of quiet, and very few tyrants get their deserts; it is therefore a salutary restraint upon princes to inculcate the belief that the right to assassinate them if they become oppressive belongs to every one, and that the authority of the people is above their authority.¹

But the normal organization of monarchy includes an organ of the popular will in the Estates of the Realm — the bishops, nobles and representatives (*procuratores*) of the cities. This assembly is what Mariana calls the "state" (*respublica*) and the "people" (*populus*), and its superiority in power to the king is established in a full examination of the relative merits of absolute and limited monarchy.² The Estates are the formulator and guarantor of the fundamental law of the land, by which the monarch is circumscribed. In their control rest all matters of taxation, of succession to the throne, of the established religion of the state. The prince is in no sense *legibus solutus*; besides the restraint imposed by these fundamental laws, he is under a divine and natural obligation to submit to the will of God, and even to public opinion (*populari etiam civium opinione*). Mariana naturally dwells somewhat insistently on the supreme importance of the ecclesiastical element in the Estates and of ecclesiastical interests in the policy of the king; but his emphasis on these points is not stronger than that of the Protestant controversialists, while his general attitude toward absolutism is entirely in harmony with theirs. He mourns as sincerely over the decline of the Estates in Spain as Hotoman mourns over the like decline in France.

ural law. Mariana suggests however, that poison would be unobjectionable if it could be administered without the participation of the victim in the procedure, as, for example, if his clothing could be saturated with some deadly substance which would be absorbed through the skin. For this curious discussion see chapter vii: "An liceat tyrannum veneno occidere."

¹ "Quod caput est, sit principi persuasum totius reipublicæ maiorem quam ipsius unius auctoritatem esse." De rege, bk. i, ch. vi.

² Book i, chapter viii: "Reipublicæ an regis maior potestas sit?"

One book ¹ of the *De Rege* is devoted to a discussion of practical questions of policy and administration — of the aims and methods that should prevail in the royal activity. There is much sound judgment displayed in this discussion, and also at times something of that peculiar quality which gave Machiavelli a doubtful reputation. The question as to whether, in the choice of officers of the state, moral character should be a determining consideration, is answered affirmatively as to ecclesiastics and judges and negatively as to military and minor administrative positions. Admirable chapters on taxation and money respectively set forth sound principles of economics, and exhibit the disastrous effects of debasement of the coinage. Poor relief is treated at length, and the functions of the ecclesiastical institutions in the case of paupers are rationally defended. The “tramp” question even receives much attention ² — a fact which, taken in connection with the discussion of analogous questions, indicates that Spain was in a very demoralized condition from the social and economic point of view. Mariana’s discussion of military policy likewise suggests a consciousness of something wrong in Spanish affairs, possibly a reflection of the failures in the Netherlands and against England. Apart, however, from the particular references to Spanish affairs, his general doctrine is, like that of Machiavelli,³ that war is inevitable, that standing armies therefore are indispensable, and that the maintenance of domestic peace is conditioned on incessant warfare abroad. This, then, must be the royal policy. A just cause can generally be found, but whether it can be or not, keep the soldiers busy with incursions into foreign lands, with pillaging of unrighteous cities, with pure piracy and brigandage if necessary, and thus relieve the citizens of the burden of supporting them.⁴

¹ Book iii. The second book treats of the education of a prince.

² Book iii, chapter xiv.

³ Cf. Dunning, *Political Theories, Ancient and Mediæval*, p 321.

⁴ “Contendo pacem domesticam diu stare non posse nisi arma cum externis exercentur. Neque enim aut causa iusta deesse potest aut militum [milites ?] otio marcescere pati debemus; sed potius mari terraque prædas agere, in alienos fines irrumpere, urbes præsertim impiorum diripiendas militi tradere.” Bk. iii, ch. v.

The Machiavellian spirit of which this doctrine is an example, is manifest also, though in a less brutal form, in the chapter on the wisdom (*prudentia*) of the king. The supreme art of royalty is to maintain the good will of the subjects.¹ Hope and fear are the chief means. Not so much actual rewards and punishments, but the expectation of them, is effective. If a subject seeks what it is wrong to give, do not deny him so flatly as to extinguish hope. Let no one leave the royal presence in sadness. Unpleasant duties must be left to subordinates; acts of grace should be performed by the king in person.² Let popular tumults be suppressed by the most ruthless officials, and then visit upon the latter the severest penalties for any dereliction on their part that can possibly be discovered; "thus all the wickedness will be punished and yet the people will remain well-disposed toward the prince." "Nothing," says Mariana, "is more effective with kings or subjects than self-interest, nor can there be any lasting compacts or friendships save where there is hope of some advantage."³ Dissimulation, also, is indispensable to a monarch. Yet Mariana will not admit in principle the right of the king to lie or to deceive; only, he will get into serious difficulties unless he conceals his purposes and maintains a benignant aspect when conditions are most troublesome.⁴

These doctrines in the field of political ethics give a tone to Mariana's work that distinguishes it from those of the Protestant advocates of popular sovereignty whom we have considered. Calvinistic standards of morality were notoriously of a more rigid and austere type than those of the old creed, and Calvinistic theorists, whatever was true of their practice, in general clung pretty literally to the Decalogue in their code for kings. Mariana's teachings manifest a tendency toward that lax interpretation of

¹ "Debet rex, nisi id nomen exuat, volentibus imperare."

² Both Aristotle and Machiavelli had set forth this dictate of policy.

³ "Sit animo fixum, nulla re tum principes tum privatos moveri magis quam utilitate: neque ulla firma fœdera putet, nullas amicitias, unde nihil speratur commodi." Bk. iii, ch. xv.

⁴ "Mentiri et fallere numquam principi concedam; sed nisi consilia tegere didicerit, omnibus etiam noxiis benignitatem ostentare, multis sæpe difficultatibus implicabitur." *Ibid.*

duty which came to be associated with the name of the society to which he belonged, the Jesuits.

General Influence of the Anti-Monarchic Theories.

The theories which have just been described injected into political philosophy and made the central topics of its discussions concepts which dominated the field until well into the nineteenth century. The state of nature, the contractual origin of society and government and the indefeasible sovereignty of the people became henceforth dogmas that might or might not be accepted, but could never be ignored by any serious thinker on politics. That these concepts were absolutely novel at this time is of course not true. The literature of antiquity abounds in allusions to the condition of man prior to any social life, and these allusions, brought prominently before the intellectual consciousness of the times through the revival of letters, contributed much to promote discussion of the state of nature. In like manner the idea of contract and consent as the basis of political authority owed its adoption not only to the close study of the ancient Jewish system which the Reformation had brought about, but also, as shown particularly in the *Vindiciæ contra Tyrannos* and in the writings of Althusius, by the adaptation to political debate of the doctrines of the Roman private law. The system of Marsiglio and Cusanus, which had been adopted freely by Luther and the other great Reformers in ecclesiastical polity, was as freely applied by their successors in political questions. In the spirit, if not in the precise words of Cusanus, it was laid down that since all men are by nature equal, the authority of any one over another must rest wholly on agreement and consent; and beyond where Cusanus had gone, the form and duration of this agreement and consent were deduced from the principles of commercial contract. Now for the first time explicitly and with elaboration the maxims of the Stoic jurists¹ of Rome were made the chief foundation of speculations about the state and government.

The religious wars at the end of the sixteenth century brought

¹ Cf. *Political Theories, Ancient and Mediæval*, pp. 128, 273 *et seq.*

fully into operation in secular politics the influences which were supreme in ecclesiastical politics at the beginning of the fifteenth century.¹ As Gerson and the conciliar party sought to destroy the autocracy of the pope and substitute the sovereignty of the General Council, so Languet and Buchanan and the rest sought to destroy the autocracy of the king and substitute the sovereignty of the Estates of the Realm. For in each of the theories described above, the "people" to whom sovereignty is ascribed is interpreted more or less precisely to mean the assembly of the magnates. As the conciliar party had consciously sought to establish a government by the great prelates, so the anti-monarchic party sought to establish a government by the secular nobles. In a large sense the theory of popular sovereignty at this time was not revolutionary, but reactionary; it presented the familiar phenomenon of a philosophy based upon a system of institutions that was passing away. For the practical demand of the assailants of monarchy was that the feudal aristocracy should resume the sway which the monarchs were taking from its hands. The "sovereignty of the people," as set forth especially by Althusius, was wholly opposed to the consolidation that was going on and that could be perfected only by the national monarchs. Hence the theories that we have been considering failed of realization in the principal kingdoms,² and the absolute monarchy continued its work. Only when a new content was put into the old formula of "popular sovereignty" was the dogma properly adaptable to revolutionary propaganda.

In many details of their theory the anti-monarchic writers that we have noticed differed from one another, and the shades of doctrine on a variety of subjects were manifold. But one feature stands out clear and conspicuous in all the theories, namely, the idea that political authority is derived by its possessor not from a divine but from a human source. The construction put by Luther and Calvin on the teachings of the Scriptures in this respect is dropped, and submission to any particular ruler as the representative of God's will ceases to be the presumptive duty of a Christian.

¹ Political Theories, Ancient and Mediæval, pp. 266 *et seq.*

² Scotland remained a constitutional kingdom and the United Netherlands an aristocratic republic, but France, Spain and England were absolute monarchies.

The law and the contract intervene between God and the monarch, and the royal acts are to be subjected to the test of mere human reason. On this ground the Protestants now unite with the Catholic followers of St. Thomas and deny to secular rulers that immediate divine right, and hence that ever extending power, which the early stages of the Reformation had tended to insure to them. Calvinists and Jesuits agree in at least the one contention, that despotism has no sanction from heaven.

But while this much of the anti-monarchic doctrine is clear, there is much vagueness and conflict in the treatment of many points of theoretical importance. "The people," which is at the basis of so much of their disputation, is a somewhat elusive concept. In one place the term signifies the classes which constitute the Estates of the Realm, in another the Estates as organized in their assembly, in another something which the Estates represent: but in no case will it be conceded that the population as a whole, conceived as a multitude of individuals, is to be recognized as an embodiment of political power. Again, in the idea of the contract, the parties are in every case assumed to be the people and the king; but only Althusius gives any adequate idea as to the process by which a people comes to exist.¹ The contract dealt with by all the rest is, in short, what has come to be called the civil or governmental contract, as distinct from the social contract. It was hardly strange that in the stress of controversy something less than exact theoretical analysis should have characterized the thinking of the earnest men who were in the heart of the fray. They sought and in a measure achieved certain concrete ends, but it was left for a series of thinkers who could bring more of philosophy and less of passion to the task, to formulate with precision the definitions and the dogmas which were of the highest significance in the political theory of the times.

WM. A. DUNNING.

¹ Mariana starts from the isolated man, but the steps by which a number of these become a people, capable of expressing a corporate will, are not indicated.